

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE
AT KNOXVILLE**

KATHERINE H. CHISHOLM,
Plaintiff,

v.

COVENANT HEALTH,
Defendant.

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No. 3:09-CV-198
(Phillips)

ORDER

In this lawsuit, plaintiff Katherine Chisholm has sued her former employer, defendant Covenant Health¹, for violations of the Tennessee Human Rights Act, the Tennessee Disability Act, the Americans With Disabilities Act, and the Family Medical Leave Act. Chisholm was employed by Parkwest Medical Center as a Physical Therapist Assistant from 1996 until her termination on December 17, 2007. In 2007, Chisholm was diagnosed with cryptogenic partial epilepsy and began suffering simple partial seizures, as well as complex seizures. Chisholm alleges that Covenant Health interfered with her rights to take FMLA leave, failed to accommodate her disability under the ADA/TDA, and terminated her because of her disability and in retaliation for her protected activities in violation of the FMLA, ADA, THRA and TDA. Covenant Health, on the other hand, alleges

¹ Defendant Covenant Health asserts Covenant did not employ plaintiff and is not a proper party to this lawsuit. Instead, defendant states that Parkwest Medical Center, a wholly owned subsidiary corporation of Covenant Health, employed plaintiff. For purposes of analysis of the summary judgment motions, the court assumes *arguendo* that Covenant Health employed plaintiff.

that Chisholm was terminated for (1) two attendance policy violations on December 9 and 11, 2007, where she did not call in for an absence or report to work; (2) job abandonment on December 14, 2007, causing approximately fifteen patients to miss scheduled care; and (3) failure to follow the Standards and Behaviors required of employees of Parkwest. Currently pending are the parties' cross-motions for summary judgment.

Upon careful review of the voluminous materials submitted by the parties, the court finds that there are multiple issues of material fact which preclude summary judgment and the same should be submitted to the jury including: (1) whether plaintiff was subjected to discriminatory/retaliatory treatment because of her disability²; (2) whether defendant interfered with plaintiff's rights under the Family Medical Leave Act; (3) whether plaintiff was subjected to discriminatory/retaliatory treatment under the Family Medical Leave Act; and (4) whether defendant terminated plaintiff for legitimate non-discriminatory reasons unrelated to her health condition.

Accordingly, the parties' motions for summary judgment [Docs. 10, 13] are hereby **DENIED**. The parties will prepare the case for trial.

ENTER:

s/ Thomas W. Phillips
United States District Judge

² For purposes of analysis of the summary judgment motions, the court assumes *arguendo* that Chisholm's epileptic condition constitutes a disability according to the Americans with Disabilities Act.